

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JANICE DELORES MILLS,
a.k.a. JANICE D. MILLS,
a.k.a. JANICE ELLIS,
a.k.a. JANICE COLLINS,
a.k.a. JANICE THOMPSON,

Registered Nurse License No. 401317,

Respondent.

Case No.: 2005-124

OAH No.: L2005090184

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective December 17, 2008.

IT IS SO ORDERED November 17, 2008.

BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

La Francine W Tate

By _____

rfm

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In the Matter of the Accusation Against:

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Respondent.

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PROPOSED DECISION

Michael A. Scarlett, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 26, 2008 and August 7, 2008, at Los Angeles, California.

Christina Thomas, Deputy Attorney General, represented Complainant Ruth Ann Terry. Janice Delores Mills (Respondent) was present at the hearing both days and represented herself.

Oral and documentary evidence was taken and the matter was submitted on August 7, 2008.

FACTUAL FINDINGS

1. Ruth Ann Terry, M.P.H., R.N. (Complainant) filed the Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing (Board), Department of Consumer Affairs.

2. The Accusation alleged that Respondent committed unprofessional conduct when she knowingly prepared, made or subscribed writings with the intent to present, or be used in support of a false or fraudulent claim, pursuant to Business and Professions Code, sections 2750, 810, subdivision (a), and 2761, subdivision (a). Respondent filed a Notice of Defense and the hearing in the above-captioned matter ensued.

3. On August 31, 1986, the Board issued Registered Nurse License No. 401317 to Respondent. The license is in full force and effect and will expire on March 31, 2010, unless renewed. There is no history of prior disciplinary action regarding this license.

4. Respondent began working as a registered nurse (RN) in approximately 1986. Initially, she only worked as an RN in hospitals or clinics. In approximately 1999, she began working for an agency known as Staff Builders, a.k.a., "Tender Loving Care" (TLC), located in Los Angeles, California. TLC provided in-home care services to patients. Respondent worked for TLC because she needed a "flexible schedule" to help her mother care for her father who had a serious illness. In January 2001, Respondent's father died, but she continued to work for TLC until February 2002 because the agency was "struggling" and needed RNs. Respondent ultimately resigned from TLC citing family obligations and the need to care for her mother who had also become seriously ill.

5. In July 2001, Respondent was assigned by TLC to provide in-home health care services to a patient by the name of E.B. Respondent typically made two visits daily to E.B. and documented those visits by preparing "nursing notes." The nursing notes are used to record the RN's time for billing purposes, as well as record the patient's health condition at the time of the visit. Both the patient and the RN are required to sign the nursing note. From November 1, 2001, until December 31, 2001, the relevant period in question, Respondent submitted two nursing notes daily for patient E.B.

6. On June 13, 2002, the Board received a complaint dated June 5, 2002, from Roberta Wilson, National Director of Regulatory Affairs for TLC, Houston, Texas. Ms. Wilson alleged that Medicare had discovered discrepancies in billings submitted for patient E.B. Medicare discovered that several billings for in-home nursing care for patient E.B. overlapped with periods of hospitalization for that patient. The Medicare records revealed that patient E.B. had been hospitalized as an in-patient from November 14 through 24, 2001, and December 29 through 31, 2001. On these same dates, Respondent submitted nursing notes indicating that she had provided in-home nursing care to patient E.B. Based on Ms. Wilson's complaint, the Board initiated an investigation of Respondent on July 29, 2002. Respondent was interviewed by Board investigator Cristina Vasquez, one year later on September 24, 2003.

7. Respondent admitted completing the November 14 through 24, 2001, and December 29 through 31, 2001, nursing notes for patient E.B. (E.B. nursing notes), both during her interview with the Board investigator in September 2003, and at hearing. Respondent submitted nursing notes for patient E.B. for these periods, even though E.B. was hospitalized at St. Francis Medical Center from November 14 through 24, 2001, and at Coast Plaza Doctor's Hospital from December 29 through 31, 2001. Although Respondent admitted she prepared and submitted the E.B. nursing notes, she contends she mistakenly prepared the notes as a result of her practice of "predating" nursing notes, and TLC's request that she rewrite several weeks or months of nursing notes because of new Medicare billing requirements.

8. On September 24, 2003, Respondent told investigator Christina Vasquez that she mistakenly submitted the E.B. nursing notes because she “predated” her notes to save time completing her required paper work. Predating notes is a practice by which the RN completes the general information in the nursing note, including the patient’s name, date and time of visit, and the RN’s name and social security number. This general information is typically completed before entering the patient’s home to save time completing the home visit. According to complainant’s expert, Jane Kimball¹, predating nursing notes in advance is not an acceptable practice in the industry, but it is not uncommon for nurses to complete the general information in the nursing note prior to arriving at a patient’s home in an attempt to save time. Preparing the medical care portion of the nursing notes prior to completing the visit is never an acceptable practice.

9. Predating nursing notes does not explain the E.B. nursing notes Respondent prepared for a time when the patient was hospitalized and could not have received in-home care. Respondent submitted nursing notes for every single day in November and December 2001. E.B. was hospitalized 14 days during this period. Consequently, Respondent’s billing records for this period should have been 14 days less, even if she mistakenly used predated nursing notes with the wrong dates to record her visits. That was not the case here. The nursing notes did not indicate a 14 day break in in-home care for E.B. to reflect the time the patient was hospitalized during those two months.

10. Respondent admitted she hired other persons or “girls” to duplicate or predate nursing for Respondent’s patients to save time in completing paper work. She claimed that the persons would only enter general information about the patient, and not the medical portion of the nursing notes. It is never an accepted practice to allow someone other than the RN to complete any portion of a nursing note to be signed by the RN. Such a practice ultimately results in incorrect and false entries in the RN’s nursing notes.

11. Respondent admitted she predated nursing notes, but denied ever completing any of the patient’s medical information prior to arriving at the patient’s home. E.B.’s patient records revealed that Respondent conducted a “recertification assessment” on November 24, 2001. The recertification assessment is a fairly compressive document of nine pages that requires the nurse to enter a wide range of medical information regarding the patient’s present medical condition. Respondent could not have completed this assessment during an in-home visit because E.B. was hospitalized on that date. Respondent again asserted that the recertification assessment was mistakenly dated as a result of the practice of her predating nursing notes. The evidence established that Respondent not only predated nursing notes with general information, but that she completed medical information in notes and assessment in advance of providing services to E.B.

¹ Jane Kimball has a Masters Degree in Public Health and Health Education, from University of California Los Angeles, and a Bachelor of Science Degree in Nursing from Mount St. Mary’s College, Los Angeles. She has been a Nursing Instructor since 2001, and has been a Nursing Consultant for the Department of Justice, California State Attorney General’s Office since 1996.

12. Respondent also attempted to explain that the E.B. nursing notes were mistakenly submitted as a result of Respondent rewriting nursing notes at the request of TLC because of a change in billing forms required by Medicare. A review of the November and December 2001 nursing notes for patient E.B. revealed a great similarity in the content of each note. A significant portion of the information in every note was identical. Complainant's expert opined that it was unlikely patient E.B.'s medical data would be unchanged over a prolonged period of time given his serious medical condition. E.B. was a diabetic amputee who required hemodialysis three times per week. In Ms. Kimball's opinion, E.B.'s "fragile" medical condition would necessarily result in fluctuating vital signs and body weight which should have been, but was not, indicated in Respondent's nursing notes. The stark similarities in the nursing notes, particularly the nursing notes for periods in question, raise serious concerns regarding the authenticity the E.B. nursing notes, and suggests that Respondent used a template in duplicating many of the nursing notes in question.

13. Respondent persistently argued that she did not intentionally submit false information in the E.B. nursing notes to TLC. It is possible that TLC required Respondent to rewrite nursing notes for billing purposes as Respondent asserted at hearing. No percipient witness from TLC with knowledge of the facts testified at hearing. The evidence, however, supports a finding that the E.B. nursing notes were submitted by Respondent with false information because Respondent used questionable and unacceptable practices, including predating nursing notes well in advance of the patient visit, allowing others to prepare nursing notes on her behalf, and writing or rewriting nursing notes using a template, in an attempt to save time during the in-home patient visits.

14. Notwithstanding Respondent's contention that the nursing notes were submitted in error, Respondent admitted preparing the nursing notes for billing purposes and her signature appears on every nursing note. There is clear and convincing evidence that Respondent knowingly prepared the E.B. nursing notes with the intent to present the notes to TLC and Medicare for billing purposes. The E.B. nursing notes contained false information that was submitted to TLC and Medicare as claims for Respondent's in-home nursing care. As the licensee, Respondent is ultimate responsibility to enter correct and truthful information in the patient's nursing notes. Respondent's submission of nursing notes with false information constitutes unprofessional conduct and is grounds for discipline.

15. At hearing, Respondent appeared genuinely remorseful for her actions. She stated that she regretted submitting the false E.B. nursing notes and that she did not intend to work as a RN providing in-home care again.

16. Respondent has five children that she has raised with an emphasis on honesty, truthfulness, and lawful behavior. By all accounts, Respondent appears to be a good person who may have been overwhelmed by the requirements of in-home nursing care and personal responsibilities she assumed when her father became seriously ill in 2001. Respondent's mother also became ill soon after her father died in January 2001, and Respondent was

required to care for her mother for an extended period of time. Respondent ultimately resigned from TLC citing significant family obligations.

17. Respondent has been unable to obtain permanent or stable employment since leaving TLC. Her family obligation to her mother also hindered her ability to re-enter the job market. Respondent has primarily worked part time as an RN with different nursing registries or agencies in hospitals or clinics since leaving TLC. Respondent is currently working as a fill in nurse at Hubert H. Humphrey Hospital in Los Angeles, California.

18. Respondent testified that she has experienced great economic hardship as a result of the disciplinary action pending by the Board. Respondent has fallen significantly behind in her home mortgage payments and is at risk of home foreclosure as of the date of hearing.

19. Respondent had been a responsible and competent nurse before her employment with TLC, and appears to be much more comfortable working as a hospital nurse than she was providing in-home care. She is well liked by her colleagues and was described as dependable and trustworthy by one of her former supervisors. Respondent's conduct in 2001 appears to have been an aberration in her nursing career. She does not have any prior discipline, and has not had any subsequent allegations of misconduct or disciplinary action by the Board.

20. Complainant submitted evidence of the costs of investigation and prosecution of this case in the amount of \$17,343. These costs include 86 hours for Attorney General cost for a total of \$12,683.25; 30.25 hours for investigation costs for a total of \$3,630.00; and 11.25 hours of legal assistant cost for a total of \$1,029.75. These costs appear to be excessive given the limited nature and scope of the allegations contained in Respondent's Accusation. The investigation and prosecution of this matter also appears to have taken an excessive amount of time to get to hearing. Although Respondent was responsible for some of the delay due to a change in counsel, and subsequent motions for continuance, it can not be concluded that the Board's costs are reasonable in this case.

21. Further, Respondent presented sufficient evidence of financial hardship, including the impending foreclosure on her home, to establish cause to reduce the cost requested by the Board.

LEGAL CONCLUSIONS

1. The standard of proof to be used in a disciplinary proceeding before the Board is "clear and convincing proof to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) The burden rests on Complainant to establish the charging allegations by proof that is clear, explicit and unequivocal—so clear as to leave no substantial doubt, and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

The standard of clear and convincing proof is greater than the standard of preponderance of the evidence, and in the civil law context has been described as evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts. (*See* Basic Approved Jury Instructions (Civil, 8th edition), BAJI 2.62.)

2. Business and Professions Code, section 2750 provides, in pertinent part, that “[e]very certificate holder or licensee, including licensees holding temporary licenses, or licensees holding licenses placed in an inactive status, may be disciplined as provided in this article [article 3, commencing with section 2750]. As used in this article, “license” includes certificate, registration, or any other authorization to engage in practice regulated by this chapter” [chapter 6, commencing with 2700].

3. Section 2761, subdivision (a) provides, in pertinent part, that the Board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for unprofessional conduct. Business and Professions Code, section 810, subdivision (a), provides in pertinent part, that:

It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

[¶] [¶]

(2) Knowingly prepare, make, or subscribe any writing with the intent to present or use the same, or allow it to be presented or used in support of any false or fraudulent claim.

4. Cause exists to discipline Respondent’s license pursuant to Business and Professions Code, sections 810, subdivision (a)(2), and 2761, subdivision (a), in that Respondent knowingly submitted nursing notes for billing purposes that contained false information, by reason of Factual Findings 4 through 14.

Respondent admitted she prepared E.B. nursing notes for November 14 through 24, 2001, and December 29 through 31, 2001, even though E.B. was hospitalized during both those periods. Respondent knowingly prepared nursing notes and presented them to TLC and Medicare for purpose of billing for her in-home health care services for E.B. (Factual Findings 5 to 7, 14.) The nursing notes contained false information and therefore constituted unprofessional conduct. (Bus. & Prof. Code §§ 810, subd. (a)(2) and 2761, subd. (a).)

Respondent also committed unprofessional conduct when she inappropriately predated nursing notes, or had others prepare nursing notes on her behalf, and by duplicating

entire nursing notes which resulted in nursing notes containing identical information over extended periods of time, including E.B. nursing notes for November and December 2001. (Factual Finding 8 to 14.) (Bus. & Prof. Code, § 2761, subd. (a).)

5. In determining whether revocation, suspension or probation is to be imposed in a disciplinary action, the pertinent factors to be considered are: (1) the nature and severity of the act(s), offenses, or crime(s) under consideration; (2) actual or potential harm to the public; (3) actual or potential harm to any patient; (4) prior disciplinary record; (5) number and/or variety of current violations; (6) mitigating evidence; (7) rehabilitation evidence; and (8) time passed since the act(s) or offense(s) occurred. (Cal. Code of Regs., tit. 16, § 1444.5.)

Here, Respondent's conduct was of a serious nature in that she provided false information in a patient's nursing notes that were used for purposes of billing. The conduct, however, was limited to a two month period and appears to be an unfortunate blemish on what was otherwise a good nursing career. Although the patient was not actually harmed by Respondent's actions, the potential for harm existed as Respondent's conduct involved falsifying medical records of a patient. The actual harm to the public was minimal because the billing to Medicare for in-home services for the patient was for only 14 days. Respondent had no prior disciplinary record

There are factors in mitigation that should be considered. Respondent was under significant family pressures during her time with TLC. She was required to provide care for her seriously ill father and mother in 2001, and this time commitment may have contributed to Respondent's use of improper practices in completing her nursing notes.

Finally, Respondent has not worked in the home health care field since 2002 and does intend to seek this type of employment in the future. Respondent's conduct occurred almost eight years ago, a significant amount of time. Respondent has continued to work out of nursing registries in hospitals and clinics without further incident during this period.

On this record, it is determined that it would not be against the public interest to allow Respondent to retain a properly restricted registered nursing license with probationary terms and conditions, by reason of Factual Findings 15-19.

6. Cause does not exist to order to award Complainant its costs, pursuant to the provisions of Business and Professions Code section 125.3, by reason of Factual Finding 1-14. However, Respondent has shown an extreme financial hardship which warrant's a reduction in the costs awarded in this proceeding.

Business and Professions Code, section 125.3, provides that the Board may request the administrative law judge to direct a licensee found to have committed a violation of the Act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

Zuckerman v. State Board of Chiropractic Examiners (2002) 29 Cal.4th 32, set forth four factors required to be considered when deciding whether to reduce or eliminate costs: (1) Whether the licentiate used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licentiate had a "subjective" good faith belief in the merits of his position; (3) whether the licentiate raised a "colorable challenge" to the proposed discipline; and (4) whether the licentiate had the financial ability to make payments.

Here, Respondent satisfies these factors in that she did not abuse the hearing process and established that she does not have the financial ability to pay the costs requested by the board. Accordingly, Complainant's cost is reduced to \$8,500.00.

ORDER

IT IS HEREBY ORDERED that Registered Nurse License Number 401317 issued to Respondent Janice Deloris Mills is revoked. However, the revocation is stayed and Respondent is placed on probation for three years under the following terms and conditions of probation:

SEVERABILITY CLAUSE

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) OBEY ALL LAWS

Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM

Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at

all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

(3) REPORT IN PERSON

Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE

Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when she resides outside of California. The Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

(5) SUBMIT WRITTEN REPORTS

Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which she has a registered nurse license.

(6) FUNCTION AS A REGISTERED NURSE

Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for six (6) consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If Respondent has not complied with this condition during the probationary term, and the Respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS

Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, Respondent shall notify the Board in writing within seventy-two (72) hours after he or she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he or she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION

Respondent shall obtain prior approval from the Board regarding Respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the Respondent with or without Respondent present.

(9) EMPLOYMENT LIMITATIONS

Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

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(10) COMPLETE A NURSING COURSE(S)

Respondent, at her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

(11) COST RECOVERY

Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$8,500. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, but in no case shall payments be made less than quarterly. Payments must be completed no later than three months prior to the end of the probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

(12) VIOLATION OF PROBATION

If a Respondent violates the conditions of his/her probation, the Board after giving the Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of the Respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.


(13) LICENSE SURRENDER

During Respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (2) One year for a license surrendered for a mental or physical illness.

DATED: September 8, 2008


MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings

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7

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2005-124

12 JANICE DELORIS MILLS,
a.k.a. JANICE D. MILLS,
13 a.k.a. JANICE ELLIS,
a.k.a. JANICE COLLINS,
14 a.k.a. JANICE THOMPSON
1708 W. 156th Street
15 Compton, CA 90220

A C C U S A T I O N

16 Registered Nurse License No. 401317

17 Respondent.
18

19 Complainant alleges:

20 PARTIES

21 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
22 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
23 Department of Consumer Affairs.

24 2. On or about August 31, 1986, the Board issued Registered Nurse License
25 No. 401317 to Janice Deloris Mills, also known as Janice D. Mills, also known as Janice Ellis,
26 also known as Janice Collins, also known as Janice Thompson (Respondent). The Registered
27 Nurse License was in full force and effect at all times relevant to the charges brought herein and
28 will expire on March 31, 2006, unless renewed.

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3. This Accusation is brought before the Board, under the authority of the

4. All section references are to the Business and Professions Code unless otherwise

4. Section 2750 states, in pertinent part:

"Every certificate holder or licensee, including licensees holding temporary
licensees holding licenses placed in an inactive status, may be disciplined as provided
article 3, commencing with section 2750]. As used in this article, 'license' includes
stration, or any other authorization to engage in the practice regulated by this
r 6, commencing with section 2700]."

5. Section 2764 states:

"The lapsing or suspension of a license by operation of law or by order or decision of a court of law, or the voluntary suspension of a license by a licentiate shall not constitute a bar to the exercise of the jurisdiction of the board of jurisdiction to proceed with any investigation of or disciplinary proceeding against a licensee, or to render a decision suspending or revoking such license."

6. Section 2811, subdivision (b), provides in pertinent part, that each license in accordance with that section shall expire, but may within a period of eight years be reinstated.

7. Section 810 states, in pertinent part:

(a) It shall constitute unprofessional conduct and grounds for disciplinary action, suspension or revocation of a license or certificate, for a health care professional to do the following in connection with his or her professional activities:

• • •

“(2) Knowingly prepare, make, or subscribe any writing with the intent to present
 , or to allow it to be presented or used in support of any false or fraudulent claim.”

8. Section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or
 tion for a certificate or license for any of the following:

"(a) Unprofessional conduct"

9. Section 125.3, subdivision (a), states, in pertinent part:

"Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

FIRST CAUSE FOR DISCIPLINE

(False or Fraudulent Writing)

10. Respondent has subjected her registered nurse license to discipline under Section 2761, subdivision (a), and Section 810, subdivision (a)(2), on the grounds of unprofessional conduct, for false or fraudulent writing, as follows:

a. On or about and between November 14, 2001 through November 24, 2001, and December 29, 2001 through December 31, 2001, while licensed as a registered nurse, Respondent was employed by Tender Loving Care Home Health Care Services, Inc., and providing home health care visits to patient E.B. Respondent falsified approximately 28 home health care visits to E.B. by providing documentation to Tender Loving Care Home Health Care Services, Inc., stating she made two daily visits to the patient on November 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and December 29, 30, and 31, when, in fact, patient E.B. was hospitalized on those dates.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Billing)

11. Respondent has subjected her registered nurse license to discipline under Section 2761, subdivision (a), on the grounds of unprofessional conduct, in that Respondent billed for home health visits that were not made, as set forth above in paragraph 10.

PRAYER


WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1 1. Revoking or suspending Registered Nurse License No. 401317, issued to
2 Janice Deloris Mills, also known as Janice D. Mills, also known as Janice Ellis, also known as
3 Janice Collins, also known as Janice Thompson;

4 2. Ordering Janice Deloris Mills, to pay the Board the reasonable costs of the
5 investigation and enforcement of this case, pursuant to Section 125.3;

6 3. Taking such other and further action as deemed necessary and proper.

7 DATED: 11/27/05

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11 RUTH ANN TERRY, M.P.H., R.N.
12 Executive Officer
13 Board of Registered Nursing
14 Department of Consumer Affairs
15 State of California
16 Complainant
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28 prepared by cak (11/04)